

NELSON P. COHEN
United States Attorney

SUSAN J. LINDQUIST
Assistant U.S. Attorney
Federal Building & U.S. Courthouse
222 West Seventh Avenue, #9
Anchorage, Alaska 99513-7567
Phone: (907) 271-3378
Fax: (907) 271-2344
Susan.Lindquist@usdoj.gov

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

JOEL WALLENDER,) Case No. 3:05-cv-00263-JKS
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA,) **UNITED STATES' MOTION TO
)**
)
Defendant.)
)
)

The United States, through counsel, moves to correct an incorrect factual assumption in the sur-reply. Government counsel discussed this issue with Plaintiff's counsel, but there was no agreement on the wording for a stipulation.

In the sur-reply, at Docket 31, page 12, Plaintiff writes about the Osborne

Daily Report marked as Ex. J. He wrote: "Then again, the Daily Reports also indicate that Zahn (presumably the "QC" mentioned in Exhibit J) was aware of fall protection safety violations before he left on vacation. He added that Zahn pointed out the safety violations the day before he left on vacation. Plaintiff provided no cite for these factual statements or assumptions. The statements are wrong. The government is attaching to this motion Mr. Zahn's declaration, Ex. N, explaining that only Osborne had a QC and his name was Chris Seely. The CoE does not have a QC, and the day before his vacation, Mr. Zahn did not observe the violations mentioned in the Daily Report at Ex. J. Moreover, he does not issue any violation when he observes Osborne's employees violate the safety rules. Ex. N. He refers the issue to Mr. Seely, Osborne's Contractor Quality Control employee.

The government moves that the incorrect statements be corrected..

//

//

//

//

//

RESPECTFULLY SUBMITTED March 1, 2007, in Anchorage, Alaska.

NELSON P. COHEN
United States Attorney

s/ Susan J. Lindquist
222 West 7th Ave., #9, Rm. 253
Anchorage, AK 99513-7567
Phone: (907) 271-3378
Fax: (907) 271-2344
E-mail: susan.lindquist@usdoj.gov
AK #9008053

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2007,
a copy of the foregoing **UNITED STATES' MOTION
TO CORRECT AN INCORRECT FACTUAL
ASSUMPTION IN THE SUR-REPLY AT DOCKET 31**
was served electronically on Peter R. Ehrhardt.

s/ Susan J. Lindquist